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DATO' AHMAD ZAHID HAMIDI

v.

AMIR BAZLI ABDULLAH

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COURT OF APPEAL, PUTRAJAYA
ZALEHA ZAHARI JCA
CLEMENT ALLAN SKINNER JCA
AZIAH ALI JCA
[CIVIL APPEAL NO: B-02(IM)-1803-2010]

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18 MAY 2012

CIVIL PROCEDURE: *Striking out - Writ and statement of claim - Whether there was non-indorsement of plaintiff's claim in writ - Rules of the High Court 1980, O. 6 r. 2(1)(a) - Whether there was reasonable*

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cause of action - Whether statement of claim discloses some grounds of action - Whether an appropriate case for striking out - Rules of the High Court 1980, O. 18 r. 19(1)

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This was an appeal against the decision of the Judicial Commissioner in dismissing the defendant's (appellant) application in encl. 5 where the defendant sought to strike out the plaintiff's (respondent) writ and statement of claim on the following grounds: (i) by reason of non-indorsement of the plaintiff's claim in the writ; (ii) the statement of claim did not disclose a reasonable cause of

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action against the defendant and was therefore frivolous, vexatious and an abuse of court's process. In his statement of claim, the plaintiff had alleged that on 16 January 2006, the plaintiff had been taken by force to a Club at Country Heights, Kajang where the defendant and his agents had assaulted him. Arising from this,

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he had suffered serious injuries to his face. The plaintiff also alleged that the defendant had threatened to kill him, and that the defendant and his agents had unlawfully confined him at the defendant's residence. The plaintiff had claimed loss and damages. The defendant in his defence and counterclaim took issue with the

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plaintiff's version as to what transpired on that day in question and denied committing the said acts. According to the defendant, by reason of the publication of the untrue version of events related by the plaintiff reported in some newspapers, he had suffered considerable distress, embarrassment and anxiety. He then

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claimed damages for libel. Thereafter, the defendant applied to strike out the plaintiff's writ and statement of claim.

Held (dismissing the appeal with costs)
Per Zaleha Zahari JCA delivering the judgment of the court:

(1) The indorsement on the writ of summons "Tuntutan plaintif terhadap defendan adalah seperti terkandung di dalam pernyataan tuntutan dilembarkan di sini" sufficed for the purpose of O. 6 r. 2(1)(a) Rules of the High Court 1980. (para 16)

(2) It is only in plain and obvious cases that recourse should be had to the summary process under O. 18 r. 19(1) of the Rules of the High Court 1980. The summary procedure could only be invoked when it can clearly be seen that a claim or answer is on the face of it 'obviously unsustainable.' (*Bandar Builder Sdn Bhd & Ors v. United Malayan Banking Corporation Bhd*). (para 17)

(3) So long as the statement of claim discloses some ground of action, the mere fact that the plaintiff is unlikely to succeed at the trial is no ground for striking out (*Loh Holdings Sdn Bhd v. Peglin Development Sdn Bhd & Anor*). (para 18)

(4) Both the claim and the defence and counterclaim raises issues of fact requiring serious consideration and was capable of resolution only after taking *viva voce* evidence at trial by calling of witnesses and cross-examination of them. Accordingly, this was not an appropriate case for striking out. (para 19)

Bahasa Malaysia *Translation of Headnotes*

Ini adalah rayuan terhadap keputusan Pesuruhjaya Kehakiman menolak permohonan defendan (perayu) pada lampiran 5 di mana defendan membuat permohonan untuk membatalkan writ dan penyata tuntutan plaintif (responden) atas alasan-alasan di bawah (i) bahawa tiada pengendorsan tuntutan plaintif di dalam writ; (ii) bahawa penyata tuntutan tidak mendedahkan kausa tindakan munasabah terhadap defendan dan oleh itu adalah remeh, menyusahkan dan satu salahgunakan proses mahkamah. Dalam penyata tuntutannya, plaintif mendakwa bahawa pada 16 Januari 2006, plaintif telah dengan cara keras dibawa ke sebuah Kelab di Country Heights, Kajang di mana defendan dan agen-agennya telah menyerangnya. Berbangkit daripada itu, plaintif telah mengalami kecederaan serius pada mukanya. Plaintif juga mendakwa bahawa

defendan telah mengugut untuk membunuhnya, dan defendan dan agen-agennya telah dengan salah mengurungnya di kediaman defendan. Plaintif telah menuntut kehilangan dan kerugian. Defendan dalam pembelaan dan tuntutan balasnya tidak setuju dengan versi plaintif berkenaan apa yang berlaku pada hari itu dan menafikan melakukan perbuatan-perbuatan tersebut. Menurut defendan, oleh sebab penerbitan versi tidak benar peristiwa yang telah diberitahu plaintif yang dilaporkan dalam beberapa surat khabar, defendan telah mengalami kesusahan yang amat teruk, malu dan keresahan. Defendan kemudiannya menuntut gantirugi untuk libel. Selepas itu, defendan memohon untuk membatalkan writ dan penyata tuntutan plaintif.

Diputuskan (menolak rayuan dengan kos)
Oleh Zaleha Zahari HMR menyampaikan penghakiman mahkamah:

(1) Pengendorsan writ saman "Tuntutan plaintif terhadap defendan seperti yang terkandung di dalam penyataan tuntutan dilembarkan di sini" memadai bagi tujuan A. 6 k. 2(1)(a) Kaedah-Kaedah Mahkamah Tinggi 1980.

(2) Hanya kes-kes yang jelas dan terang yang mempunyai hak untuk bertindak di bawah proses penghakiman terus di bawah A. 18 k. 19(1) Kaedah-Kaedah Mahkamah Tinggi 1980. Prosedur terus hanya boleh digunakan apabila ia jelas dapat dilihat bahawa tuntutan atau jawapan adalah pada permukaannya tindakan yang 'secara jelas tidak dapat dipertahankan'. *(Bandar Builder Sdn Bhd & Ors v. United Malayan Banking Corporation Bhd)*.

(3) Selagi penyata tuntutan mendedahkan beberapa alasan tindakan, fakta bahawa plaintif mungkin tidak berjaya semasa perbicaraan bukan alasan untuk pembatalan. (*Loh Holdings Sdn Bhd v. Peglin Development Sdn Bhd & Anor*).

(4) Kedua-dua tuntutan dan pembelaan dan tuntutan balas menimbulkan beberapa isu fakta yang memerlukan pertimbangan serius dan mampu diresolusikan hanya selepas mengambil keterangan *viva voce* di perbicaraan dengan memanggil saksi-saksi dan menyoalbalas mereka. Sewajarnya, ini bukan kes yang sesuai untuk dibatalkan.

Case(s) referred to:

Bandar Builder Sdn Bhd & 2 Ors v. United Malayan Banking Corporation Bhd [1993] 4 CLJ 7 SC ***(refd)***

Loh Holdings Sdn Bhd v. Peglin Development Sdn Bhd & Anor [1984] 2 CLJ 88; [1984] 1 CLJ (Rep) 211 FC ***(refd)***

Legislation referred to:

Rules of the High Court 1980, O. 6 r. 2(1)(a), O. 18 r. 19(1)

For the appellant - Shamsul Bahrin Ibrahim (Sasi Dhara Menon with him); M/s Bahrin

For the respondent - Karpal Singh (Sargeet Kaur with him); M/s Karpal Singh & Co

[Appeal from High Court, Shah Alam; Suit No: MT4(2)-21-31-2007]

Reported by Suhainah Wahiduddin

JUDGMENT

Zaleha Zahari JCA:

[1] This is an appeal against the decision of learned Judicial Commissioner Shah Alam dated 21 April 2010 in dismissing the defendant's (appellant) application in encl. (5).

[2] *Vide* encl. (5) the defendant seeks to strike out the plaintiff's (respondent) writ and statement of claim on the following grounds: firstly, by reason of non-indorsement of the plaintiff's claim in the writ; secondly, by reason of the statement of claim not disclosing a reasonable cause of action against the defendant and therefore frivolous, vexatious and an abuse of the court.

[3] The rival contentions of the parties in this case are as follows:

The Claim

[4] In his statement of claim the plaintiff alleged that on 16 January 2006, at about 10pm, when he was filling up petrol in his car at a petrol station adjacent to UNITEN, Bangi, the defendant's agents had threatened him. He was then taken by force to a club at Country Heights, Kajang. The plaintiff stated that he saw the defendant together with his son-in law, (Hisham)

and son ("KK"), there. According to the plaintiff there were others present whom he alleged to be the defendant's servants and/ agents.

[5] According to the plaintiff he had held out his hand to the defendant for a hand shake but the defendant had punched him arising from which his nasal bone broke. The plaintiff further alleged that arising from the said assault his left eye was swollen and that he was unable to open that eye.

[6] After the defendant's initial assault upon him, the plaintiff alleged that the defendant's agents who were there also assaulted him together with the defendant. The plaintiff's case was that arising from the assault upon him, he suffered serious injuries to his face.

[7] The plaintiff also alleged the defendant had threatened to kill him by repeatedly saying, "kau akan ditanam" (ie, he would bury him). He alleged that Hisham then, on the defendant's instructions, also threatened to kill him by saying, "Aku dah ingatkan kau, aku sanggup mandi darah dengan kau" (ie, I am reminding you, I am prepared to take a blood bath with you').

[8] The plaintiff further alleged the defendant and/or his agents had unlawfully confined him at the defendant's residence until 2am the following day, 17 January 2006.

[9] In these circumstances the plaintiff claimed loss and damages.

The Defence And Counterclaim

[10] The defendant in his defence and counterclaim dated 24 August 2010 took issue with the plaintiff's version as to what transpired on that day in question. The defendant then set out his own version as to what had occurred. The defendant denied threatening the plaintiff; denied that the plaintiff was taken to the Country Heights Club by force but contended that the plaintiff went there "under his own steam"; denied punching the plaintiff, took issue that the plaintiff had broken a nasal bone and suffering a swollen eye.

[11] The defendant then alleged that the plaintiff had committed unforgivable wrongs to his family. He however conceded that there was an exchange of words followed by scuffles. According to the defendant he had invited the plaintiff to his residence to avoid a

commotion at the Club House and that the plaintiff went there without a fuss. The defendant denied placing the plaintiff in confinement. According to the defendant the plaintiff had subsequently left the house like a normal visitor.

[12] The defendant took issue that the plaintiff had suffered loss and damages. If indeed, there was such a loss, the defendant contended that the plaintiff was the author of his own loss.

[13] The defendant then in his counterclaim set out in detail what he considered to be the background leading to the confrontation with the plaintiff on that material day in question. He related his version of the plaintiff's conduct prior to the incident, what he did, how the plaintiff reacted, and the conduct of those present.

[14] According to the defendant by reason of the publication of the untrue version of events related by the plaintiff which was reported in some newspapers, he had suffered considerable distress, embarrassment and anxiety. He then claimed damages for libel.

[15] Thereafter, *vide* summons-in chambers filed on 29 September 2007 in encl. (5) the defendant applied to strike out the plaintiff's writ and statement of claim.

Decision

[16] On the first issue, we agree with the learned judge that nothing turns on this point. We agree that the Indorsement on the writ of summons, "tuntutan plaintif terhadap defendan adalah seperti terkandung di dalam pernyataan tuntutan dilembarkan di sini", sufficed for the purpose of O. 6 r. 2(1)(a) of the Rules of the High Court 1980 ("the Rules").

[17] In respect of the 2nd issue, the principles upon which a court acts in exercising its discretionary power under any of the four limbs of O. 18 r 19(1) of the Rules are well settled. There is a surfeit of authorities on this point. It is only in plain and obvious cases that recourse should be had to the summary process under this rule. The summary procedure can only be invoked when it can clearly be seen that a claim or answer is on the face of it 'obviously unsustainable' (See *Bandar Builder Sdn Bhd & 2 Ors v. United Malayan Banking Corporation Bhd* [1993] 4 CLJ 7 SC).

[18] So long as the statement of claim discloses some ground of action, the mere fact that the plaintiff is unlikely to succeed at the trial is no ground for striking out (See *Loh Holdings Sdn Bhd v. Peglin Development Sdn Bhd & Anor* [1984] 2 CLJ 88; [1984] 1 CLJ (Rep) 211 FC).

[19] We agree with the learned High Court that this clearly was not such a case. Both the claim and the defence and counterclaim raises issues of fact which requires serious consideration and are capable of resolution only after taking *viva voce* evidence at trial by calling of witnesses and cross-examination of them. Accordingly this certainly was not an appropriate case for striking out.

[20] For the above reasons the appeal was dismissed with costs of RM5,000.